APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,070	06/14/2000	Terry L. Oehrke	1234	7636

21396   7590   12/31/2007
Sprint
6391 SPRINT PARKWAY
KSOPHT0101-Z2100
OVERLAND PARK, KS 66251-2100

EXAMINER
CHRISTENSEN, SCOTT B

ART UNIT	PAPER NUMBER
2144	

MAIL DATE	DELIVERY MODE
12/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 October 2007</u>.

2a)☒ This action is **FINAL**.　　2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,3-5,7-9,11-13 and 15-19</u> is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1,3-5,7-9,11-13,15-19</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1. This Office Action is in regards to the most recent papers filed on 10/29/2007.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 is dependent from claim 10, which has been cancelled in the amendment submitted on 10/29/2007. For purposes of prosecution, it is assumed that claim 18 depends from claim 9.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 3-5, and 7-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Nelson et al. in US Patent number 5,974,122, hereafter referred to as "Nelson."

With regard to claim 1, Nelson discloses a method for providing a messaging server on a computer network, the method comprising the steps of:

(a)   routing a message to a messaging server (Nelson: Figure 2 (1). The fax machines (122) and (124) are interpreted as being similar to messaging servers, as they both serve received messages to other entities on the network. It is noted that applicant lacks an explicit definition for the term "messaging server" that has a limiting effect on the claim, so the broadest reasonable interpretation of a person of ordinary skill in the art of the term "messaging server" applies, which is a device or program which serves information to other devices or programs or provides some sort of other service to other devices or programs.);

(b)   providing the message to a relay server when the messaging server is inoperable such that the message undeliverable to the messaging server (Nelson: Figure 2 (2) and Figure 1, steps (102) (104));

(c)   re-routing the message from the relay server to the messaging server if the messaging server becomes operational (Nelson: Figure 2 (3) and Figure 1, step (108)); and

(d)   invoking another messaging server if the messaging server in step (c) does not become operational (Nelson: Figure 2 (134). When the message is undeliverable, the message is forwarded to Fax Messaging Platform (134), which is interpreted as being another messaging server, as it provides the message to other devices or programs.).

With regard to claim 1, Nelson discloses

(e)   routing the message to the other messaging server of step (d) (Nelson:

Figure 2 (2)).

With regard to claim 4, Nelson discloses

(f)   storing the message (Nelson: Figure 2 (134) and Abstract. The Fax

messaging platform stores the message.); and

wherein step (e) comprises changing server information of the stored message

(Figure 2. As the message is forwarded to the FAX messaging platform instead of to

the destination, the server information of the stored message is different. It is noted that

there is no requirement that server information stored in the message is changed, only

that the server information is changed, which occurs when the message is on a different

server.).

With regard to claim 5, Nelson discloses that step (c) comprises periodically

attempting delivery of the message from the relay server to the messaging server

(Nelson: Column 2, lines 50-63. The step of determining if the destination is available

(to attempt to deliver the message) is performed a certain number of times over a period

of time.).

With regard to claim 7, Nelson discloses

(d)   sending the message to the messaging server in response to step (c)

(Nelson: Column 4, lines 62-65).

With regard to claim 8, Nelson discloses

(f)   sending the message to the other messaging server in response to step

(e) (Nelson: Figure 2. When the system determines that the message is to be

forwarded to the FAX messaging platform, the server information reflect the new

destination. As discussed in the rejection of claim 4, the server information does not

need to be stored in the message or anywhere else.).

Claim Rejections - 35 USC § 102

6.   Claims 1, 3-5, 7-9, 11-13, and 15-16 are rejected under 35 U.S.C. 102(e) as

being anticipated by Ozzie et al. in US Patent 6,859,821 B1, hereafter referred to as

"Ozzie."

With regard to claim 1, Ozzie discloses a method for providing a messaging

server on a computer network, the method comprising the steps of:

(a)   routing a message to a messaging server (Ozzie: Figure 8 and Column

16, lines 35-54. The peer units are interpreted as being equivalent to messaging

server, as the peer units serve messages to a destination.);

(b)   providing the message to a relay server when the messaging server is

inoperable such that the message is undeliverable to the messaging server ((Ozzie:

Figure 8 and Column 16, lines 35-54. If Peer Unit 802A attempts to send a message to

Peer Unit 802C, and the presence server 812 detects that Peer 802C is off-line, the

message is forwarded to relay 814 instead.);

     (c)   re-routing the message from the relay server to the messaging server if

the messaging server becomes operational (Ozzie: Figure 8 and Column 16, lines 35-

54. When peer unit 802C is back on-line, the message is forwarded to peer unit 802C.);

and

     (d)   invoking another messaging server if the messaging server in step (c)

does not become operational (Ozzie: Figure 8 and Column 16, lines 35-54).

With regard to claim 9, Ozzie discloses a computer network for providing a

messaging service, the network comprising:

     a messaging server (Ozzie: Figure 8 and Column 16, lines 35-54);

     a DNS server operable to route a message to the messaging server (Ozzie:

Column 7, lines 6-11 and lines 46-50. All components are identified by URL, which

means that a DNS server must be present in order to translate the URL into a network

address. Further, DNS servers are used on the Internet, which the system of Ozzie can

be performed over.);

     a relay server operably connected to the DNS server and the messaging server,

the DNS server operable to provide the message to the relay server when the

messaging server is inoperable such that the message is undeliverable to the

messaging server (Ozzie: Figure 8 and Column 16, lines 35-54);

wherein the relay server is operable to re-route the message from the relay

server to the messaging server if the messaging server becomes operational (Ozzie:

Figure 8 and Column 16, lines 35-54); and

another messaging server, the other messaging server invoked by the relay

server if the messaging server does not become operable such that the message is

undeliverable to the messaging server in response to the re-routing (Ozzie: Figure 8

and Column 16, lines 35-54).

With regard to claim 3, Ozzie discloses

(e)   routing the message to the other messaging server of step (d) ((Ozzie:

Figure 8 and Column 16, lines 35-54. The message is routed to relay 814 when the

peer unit 802C is off-line.).

With regard to claim 4, Ozzie discloses

(f)   storing the message (Ozzie: Figure 8 and Column 16, lines 35-54. The

message is stored in the relay until peer unit 802C is on-line.); and

wherein step (e) comprises changing server information of the stored message

(Ozzie: Figure 8 and Column 16, lines 35-54. The message is transmitted to the URL

associated with relay 814, so the server information is changed. It is noted that there is

no requirement that the server information is stored in the message or anywhere else.).

With regard to claim 5, Ozzie discloses that step (c) comprises periodically attempting delivery of the message from the relay server to the messaging server (Ozzie: Column 16, lines 62-67 and column 17, lines 10-23. The presence server can poll the peer unit periodically. Also, the peer unit can be notified that a peer wishes to send a message from time to time. These are interpreted as being similar to attempting to deliver the message, as the presence server is used to determine if the message can be delivered.).

With regard to claim 6, Ozzie discloses

(d)   invoking another messaging server when the message is undeliverable to the messaging server in step (c) (This limitation is substantially similar that presented in claim 2, and is rejected for substantially similar grounds under Ozzie.).

With regard to claim 7, Ozzie discloses

(d)   sending the message to the messaging server in response to step (c) (Ozzie: Figure 8 and Column 16, lines 35-54).

With regard to claim 8, Ozzie discloses

(f)   sending the message to the other messaging server in response to step (e) (Ozzie: Figure 8 and Column 16, lines 35-54. The message is sent to the relay server 814, which constitutes another messaging server.).

With regard to claims 11-13 and 15-16, the invention claimed is substantially

similar to that claimed in claims 3-5 and 7-8, and are rejected for substantially similar

reasons.

Claim Rejections - 35 USC § 102

7.   Claims 1, 3-5, 7-9, 11-13, 15-19 are rejected under 35 U.S.C. 102(e) as being

anticipated by Mead et al. in US Patent Application Publication US 2001/0036822,

hereafter referred to as "Mead."

With regard to claim 1, Mead discloses a method for providing a messaging

server on a computer network, the method comprising the steps of:

(a)   routing a message to a messaging server (Mead: Figure 1. The message

is routed from Home Mail Server 102 to Vehicle Server 110);

(b)   providing the message to a relay server when the messaging server is

inoperable such that the message is undeliverable to the messaging server (Mead: This

step only needs to be performed when the message is undeliverable. There is no

requirement in the claim language that the message is undeliverable. Therefore, when

the message is deliverable, the message only needs to be routed to the destination.);

(c)   re-routing the message from the relay server to the messaging server if

the messaging server becomes operational (Mead: This limitation is interpreted as

being only performed after step (b) if step (b) occurred, as the relay server only has the

message if the message was undeliverable to the messaging server, so it cannot

possibly be re-routed from the relay server if the relay server does not have the

message.); and

(d)   invoking another messaging server if the messaging server in step (c)

does not become operational (Mead: Figure 1. First, it is noted that step (c) only needs

to occur when the messaging server was unavailable in step (b). Therefore, step (d)

only needs to occur when the messaging server is unavailable in step (b), as step (d)

only occurs after step (c). Therefore, when the servers of Mead are all available, so that

the message is deliverable, the method as claimed is clearly performed.).

With regard to claim 9, Mead discloses a computer network for providing a

messaging service, the network comprising:

a messaging server (Mead: Figure 1, 110);

a DNS server operable to route a message to the meassing server (Mead:

Paragraph [0015] and Figure 1. Data network 104 can be the Internet, meaning that

DNS servers must be present if the message is forwarded through the Internet.);

a relay server operably connected to the DNS server and the messaging server,

the DNS server operable to provide the message to the relay server when the

messaging server is inoperable such that the message is undeliverable to the

messaging server (Mead: Figure 1 and paragraphs [0015]-[0016]. The relay server is

interpreted as being similar to the ground server 106 in figure 1. The message is

delivered to the ground server whether it is deliverable to the vehicle server or not, so

the DNS server is clearly operable to provide the message to the relay server whether

or not the messaging server is inoperable...);

wherein the relay server is operable to re-route the message from the relay

server to the messaging server when if the messaging server becomes operational

(Mead: Figure 1. The relay server routes the message to the vehicle server, but can

only do so when the vehicle server is able to receive messages.); and

another messaging server, the other messaging server invoked by the relay

server when the messaging server is inoperable such that the message is undeliverable

to the messaging server in response to the re-routing (Mead: Figure 1. The ground

server (106) is always able (operable) to transmit the message to another messaging

server (which is equivalent to invoking another messaging server, as a server is

"invoked" when it has a communication transmitted to it.). The other messaging server

never needs to be invoked as the claim is presented, rather, the messaging server only

needs to be able to be invoked.).

With regard to claim 3, Mead discloses

(e)   routing the message to the other messaging server of step (d) (Mead: It is

noted that step (e) does not necessarily need to be performed if the message was

deliverable in step (b) (see the rejection of claim 2 for further details). Therefore, when

the message is deliverable in step (b), Mead clearly performs the method as claimed.).

With regard to claim 4, Mead discloses

(f)   storing the message (Mead: Figure 1 and paragraph [0016]. Mead is

dealing with e-mails, so the e-mails are clearly stored at multiple points throughout the

system of Mead, including, at least, the destination server to await download by the

user.); and

wherein step (e) comprises changing server information of the stored message

(Mead: As in the rejection of claim 3, step (e) does not need to be performed if the

message is deliverable in step (b). Therefore, Mead clearly performs the method as

claimed.).

With regard to claim 5, Mead discloses that step (c) comprises periodically

attempting delivery of the message from the relay server to the messaging server

(Mead: As in the rejection of claim 1, step (b) does not need to be performed if the

message is deliverable in step (b). Therefore, Mead clearly performs the method as

claimed.).

With regard to claim 7, Mead discloses

(d)   sending the message to the messaging server in response to step (c)

(Mead: As in the rejection of claim 1, step (c) does not need to be performed if the

message is deliverable in step (b). Therefore, Mead clearly performs the method as

claimed.).

With regard to claim 8, Mead discloses

(f)   sending the message to the other messaging server in response to step

(e) (Mead: As in the rejection of claim 3, step (e) does not need to be performed if the

message is deliverable in step (b). Therefore, Mead clearly performs the method as

claimed.).

With regard to claim 11, Mead discloses that the relay server is operable to route

the message to the other messaging server (Mead: Figure 1. By utilizing network 104,

which according to paragraph [0015] may include the Internet, the relay server is able

(operable) to route the message to any other messaging server connected to network

104 (which may be the Internet).).

With regard to claim 12, Mead discloses a storage device operably connected to

the relay server and the other messaging server, the message being stored in the

storage device (Mead: Figure 1 and paragraph [0015]. As Mead is dealing with e-mails,

there is at least some storage in each of the servers to store the e-mail, at least

temporarily.); and

wherein the relay server is operable to change server information of the stored

message to route the message to the other messaging server (Mead: Figure 1. Server

information is changed whenever a message is sent to a different destination server, as

the message must be addressed to the destination. There is no requirement of what

changing the server information entails.).

With regard to claim 13, Mead discloses that the relay server is operable to periodically attempt delivery of the message from the relay server to the messaging server (Mead: Paragraph [0031]).

With regard to claim 15, Mead discloses that the relay server is operable to send the message to the messaging server in response to the re-routing (Mead: Figure 1. The ground (relay) server is able to send the message to the vehicle (messaging) server at any time, whether in response to the re-routing or not.).`

With regard to claim 16, Mead discloses that the relay server is operable to send the message to the other messaging server in response to routing the message to the other messaging server (Mead: Figure 1. The ground server is able to send the message to any server connected to network 104 at any time.).

With regard to claim 17, Mead discloses that the messaging server and relay server are within a first data center.

With regard to claim 18, Mead discloses that the messagins server and other messaging server are in first and second data centers, the first data center remote from the second data center.

With regard to claim 19, Mead discloses that the relay server is operable to

invoke a process to create another messaging server with a same name and IP

address.

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

9.   Claims 9-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Nelson in view of "DNS (domain name system)" posted on the Internet February 29,

2000 on whatis.com, and downloaded from

http://web.archive.org/web/20000307002913/whatis.com/dns.htm, hereafter referred to

as "whatis.com."

With respect to claim 9, the instant claim is substantially similar to claim 1 (see

above for claim 1 rejected under Nelson) and is rejected for substantially same reasons,

except Nelson does not disclose a DNS server operable to route a message to the

messaging server.

whatis.com discloses that DNS is the way that the Internet domain names are

located and translated into IP addresses. Therefore, any implementation of the

invention in the modern Internet would likely have a DNS server operable to route a

message to the messaging server.

It would have been obvious to have a DNS server operable to route a message

to the messaging server.

The suggestion/motivation for doing so would have been that Nelson discloses

that the system and method disclosed by Nelson may be implemented using data

communications networks such as the Internet (Nelson: Column 10, lines 16-23). In

order to utilize domain names on the Internet, a DNS server is needed. Domain names

allow a user to use an easy-to-remember handle rather than the series of numbers that

represents an IP address (whatis.com: Paragraph 1).

With regard to claims 11-13 and 15-16, the features claimed are substantially

similar to that claimed in claims 3-5 and 7-8, and are rejected for substantially similar

reasons.

With regard to claim 17, Nelson as modified by whatis.com teaches the invention

as substantially claimed except that the messaging server and relay server are within a

first data center.

However, having the messaging server and relay server within a first data center

is not a distinction that changes the functionality of the claimed system.

It would have been obvious to have the messaging server and relay server within

a first data center.

The suggestion/motivation for doing so would have been that depending on a

company's needs, having the servers in the same data center may be a desirable

feature for more efficient communications (as the communication path between the

messaging server and the relay server would be relatively short), easier maintenance

(as the messaging server and relay server would be in the same location).

With regard to claim 18, Nelson as modified by whatis.com teaches the invention

as substantially claimed except that the messaging server and other messaging server

are in first and second data centers, the first data center remote from the second data

center.

However, having the messaging server and relay server within a first data center

is not a distinction that changes the functionality of the claimed system.

It would have been obvious to have the messaging server and relay server within

a first data center.

The suggestion/motivation for doing so would have been that depending on a

company's needs, having the servers in the different data centers remote from each

other may be desirable if the company is a smaller company that is contracting the

services provided by the first messaging server and the other messaging server (which

is part of the FAX messaging platform of Nelson), therefore allowing the other

messaging server to perform functions for multiple data centers.

With regard to claim 19, Nelson as modified by whatis.com teaches the invention

as substantially claimed except that the relay server is operable to invoke a process to

create another messaging server with a same name and IP address.

A person of ordinary skill in the art would have known how to have the relay server operable to invoke a process to create another messaging server with a same name and IP address in the system of Nelson.

It would have been obvious to have the relay server operable to invoke a process to create another messaging server with a same name and IP address in the system of Nelson.

The suggestion/motivation for doing so would have been that the portion of the FAX messaging platform of Nelson that is utilized to forward the message when the recipient is able to receive the message could be divided to logical portions, each with a section of memory for storing the message and the proper forwarding information. Each of the logical messaging servers would have the same name and IP address as the FAX messaging platform, which is, at least in part, interpreted as being a messaging server.

Claim Rejections - 35 USC § 103

10.   Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ozzie.

With regard to claim 17, Ozzie discloses the invention as substantially claimed (see above for claim 9 rejected under Ozzie) except that the messaging server and relay server are within a first data center.

However, having the messaging server and relay server within a first data center is not a distinction that changes the functionality of the claimed system.

It would have been obvious to have the messaging server and relay server within a first data center.

The suggestion/motivation for doing so would have been that depending on a company's needs, having the servers in the same data center may be a desirable feature for more efficient communications (as the communication path between the messaging server and the relay server would be relatively short), easier maintenance (as the messaging server and relay server would be in the same location).

With regard to claim 18, Ozzie discloses the invention as substantially claimed (see above for claim 9 rejected under Ozzie) except that the messaging server and other messaging server are in first and second data centers, the first data center remote from the second data center.

However, having the messaging server and relay server within a first data center is not a distinction that changes the functionality of the claimed system.

It would have been obvious to have the messaging server and relay server within a first data center.

The suggestion/motivation for doing so would have been that depending on a company's needs, having the servers in the different data centers remote from each other may be desirable if the company is a smaller company that is contracting the services provided by the first messaging server and the other messaging server (which

is part of the FAX messaging platform of Nelson), therefore allowing the other messaging server to perform functions for multiple data centers.

With regard to claim 19, Ozzie discloses the invention as substantially claimed (see above for claim 9 rejected under Ozzie) except that the relay server is operable to invoke a process to create another messaging server with a same name and IP address.

A person of ordinary skill in the art would have known how to have the relay server operable to invoke a process to create another messaging server with a same name and IP address in the system of Nelson.

It would have been obvious to have the relay server operable to invoke a process to create another messaging server with a same name and IP address in the system of Nelson.

The suggestion/motivation for doing so would have been that the portion of the relay server that is utilized to forward the message when the recipient is able to receive the message could be divided to logical portions, each with a section of memory for storing the message and the proper forwarding information. Each of the logical messaging servers would have the same name and IP address as the relay server, which is, at least in part, interpreted as being a messaging server.

Response to Arguments and Amendments

Objections to the Drawings

Applicant's amendments to the specification have overcome the applied

objection to the drawings.

Objection to the Specification

Applicant's amendments to the specification have overcome the applied

objections to the Specification.

Rejections under 35 USC 112

Applicant's amendments to the claims have overcome the applied rejections

under 35 USC 112. However, Applicant's amendments have resulted in a new rejection

under 35 USC 112 as detailed above.

Rejections under 35 USC 102 and 35 USC 103

Applicant's arguments submitted on 10/29/2007 have been carefully considered,

but have been deemed not persuasive.

First, on pages 9-10, Applicant appears to argue that the rejection is improper as

"the Board entered an opinion <u>reversing all</u> of Examiner Delgado's rejections"

(Applicant's Remarks: Page 9, Paragraph 2).

Applicant cites passages in the MPEP to support the position that the rejections were improper. However, it is noted that the passages merely provide guidance rather than rules.

For example, MPEP 1214.04, cited by Applicant, does state that "the second examiner should give full faith and credit to the prior examiner's work," but the word "should" means that this is only guidance, not policy. The examiner is not required to give full faith and credit to the prior examiner's work. In fact, the MPEP gives an example of when this should not be the case in the following paragraph, "If the examiner has specific knowledge of a particular reference or references which indicate nonpatentability of any of the appealed claims to which the examiner was reversed, he or she should submit the subject matter to the Technology Center (TC) Director for authorization to reopen prosecution under 37 CFR 1.198 for the purpose of entering the new rejection." (MPEP 1214.04) As seen on page 26 of the Office Action mailed on 8/27/2007, a signature is present from a Technology Center Director from Technology Center 2100, meaning that Director approval was obtained.

Applicant further cites MPEP 706.02(l), which states "Merely cumulative references, i.e., those which would clearly fall if the primary rejection were not sustained, should be avoided." First, as stated before, the term "should" means that this passage is merely guidance, not policy. Second, the passage states "Merely cumulative references." It is noted that the rejection under Ozzie is new art, with a rejection that is relatively close to what Applicant apparently wished to claim. Nelson is provided, as the reference was never addressed as a reference under 35 USC 102 (see

below for details). Finally, Mead is provided, as the conditional statements within the claims render many claimed limitations optional, as detailed in the rejection above under Mead. Nelson and Ozzie may be cumulative, but they are not merely cumulative. Nelson was included as it was prior art included on the record, and the term "messaging server" is not explicitly defined, allowing Nelson to anticipate the claims. Meanwhile, Ozzie includes components that are closer to the exemplification of messaging server provided by Applicant in the specification. If any one rejection is not maintained, there is no expectation that the other rejections would not be maintained, so therefore, the rejections are not "merely cumulative," as apparently asserted by Applicant.

Finally, Applicant argues that Nelson was addressed by the board, and that the board reversed a rejection of these claims under 35 USC 103(a) over Nelson in combination with other references. However, it is noted that the rejection under 35 USC 103(a) that was applied previously was under other references (i.e. McDowell) in view of Nelson. The decision from 7/31/2007 reversing the Examiner never addressed Nelson as possibly anticipating or not anticipating the claims. In fact, on page 7 of the decision, the board only discusses why Nelson could not be combined with McDowell, as McDowell was a flawed reference. Therefore, as Examiner has not reapplied any rejection reviewed by the board, or even applied the McDowell reference, the rejection does not contradict any part of the board decision.

In fact, the Board merely held that "we find that Examiner's rejection rests on less than a preponderance of evidence and thus, fails to provide sufficient reasons for finding claims 1-4, 7-12, and 15-19 unpatentable for obviousness under 35 U.S.C.

103(a) over McDowell and Nelson" and that Doshi does not overcome the deficiency of

the McDowell and Nelson combination (BPAI Decision mailed 7/31/2007). The Board

never stated that the claims were allowable over the art, or more specifically, Nelson.

On page 15, Applicant argues that Nelson does not disclose messaging servers,

more specifically that mere similarities between the fax machines and the messaging

servers is not enough for a reference to anticipate the instant claims. The rejection has

been clarified that the fax machines are equivalent to the messaging server, not just

similar. Further, it is noted that the term "computer network" may refer to any network

that may have a computer connected to it. In the case of Nelson, the Fax machines and

Fax Messaging Platform are both kinds of computers. Further, Nelson discloses that

the Internet may be used (Nelson: Column 10, lines 16-23). Clearly, the Internet is a

computer network.

On page 15, Applicant argues that Nelson does not disclose "invoking another

messaging server." It appears that Applicant intends for a certain component within the

claim to invoke the messaging server, but the claim does not disclose what invokes the

messaging server, or even the time that the messaging server is invoked. If Applicant

intends for the invocation to take place in a certain fashion, the instant claim should be

amended to reflect as much.

On page 16, Applicant argues that the messaging platform cannot serve as both a relay server and another messaging server, as Nelson does not disclose the Fax Messaging server acting as the relay server and delivering the message to itself as another messaging server. However, it is noted that the claim 1 does not require that the message is ever sent to the other messaging server. If Applicant intends for certain functionality to be present in the claim, the instant claim should be amended to clearly require such.

On page 17, Applicant argues that Ozzie does not disclose a relay server and another messaging server for similar reasons as Nelson. Thus, the arguments provided under Nelson applies equally for Ozzie.

On pages 18-19, Applicant argues that Mead does not disclose certain features of the claims. However, the interpretation of certain terms within the claims are clarified below in the section labeled "Interpretation of Claims," and demonstrate how Mead does disclose the claims in as much detail as is required to anticipate the claims.

On page 20, Applicant argues that whatis.com is not a prior art reference. For this argument, Applicant asserts that the actual web page, apparently referring to http://searchnetworking.techtarget.com/sDefinition/0,,sid7_gci213908,00.html has a publication date of February 16, 2004. However, it is noted that the "Wayback Machine" is an Internet archival project, that archives web pages that were publicly available on

the date that the Wayback Machine archived the web page. The whatis.com article that

was relied upon was posted on February 29, 2000, and the article that Applicant

appears to indicate is an updated version of the same article. Applicant has provided

no evidence that the whatis.com article relied upon in the rejection was not, in fact,

available on February 29, 2000. It is further noted that the two articles are different. In

the article apparently relied upon by Applicant, there is a hyperlink corresponding to the

word "access provider" (which directs the user to

http://searchsoa.techtarget.com/sDefinition/0,,sid26_gci211511,00.html for an article on

"access provider"). Meanwhile, the February 29, 2000 article, while the same in

disclosure, does not include this hyperlink. This may account for the February 16, 2004

updated date that is provided in the article apparently relied upon by Applicant.

On pages 21-22, Applicant argues the rejections on 35 USC 103. However

Applicant's arguments appear to rely on the infallibility of Applicant's arguments with

respect to 35 USC 102. Therefore, as Applicant's arguments with respect to 35 USC

102 are not persuasive, the rejections under 35 USC 103 have been maintained.

Interpretation of Claims

This section is provided to clarify Examiner's position with respect to the

interpretation of the claims.

Claim 1, which is a method claim, includes four steps:

(a)   routing a message to a messaging server;

(b)   providing the message to a relay server when the messaging server is

inoperable such that the message undeliverable to the messaging server;

(c)   re-routing the message from the relay server to the messaging server if

the messaging server becomes operational; and

(d)   invoking another messaging server if the messaging server in step (c)

does not become operational.

It is noted that for a method claim, each and every step must be performed only

in as much detail as required by the claim language.

In the instant case, step (a) must occur.

However, step (b) only occurs "**when** the messaging server is inoperable such

that the message undeliverable to the messaging server."

Step (c) occurs only **if** step (b) occurs (as the message is only delivered to the

relay server when the messaging server is inoperable, and step (c) re-routes the

message from the relay server. Step (c) clearly cannot occur if the relay server does

not have the message).

Step (d) only occurs if step (c) occurs, as step (d) explicitly recites its

dependency on step (c).

Thus, if a reference discloses a method where a message is routed to a

messaging server that is operational, the instant claim is anticipated, for these reasons:

(a)   the message is routed to the messaging server;

(b)   the messaging server is operable, so the message does not need to be

provided to a relay server;

(c)   the message was never routed to the relay server, and the messaging

server was always operable, so the message does not need to be "re-routed";

(d)   as the messaging server is operational, and was not operational for the

entire method, step (d) does not need to occur.

Other claims include steps that further depend on the other steps. For example,

claim 3 presents "(e) routing the message to the other messaging server of step (d),"

which clearly occurs only if step (d) occurred. Therefore, as each claim appears to be

dependent on one of steps (b) through (d) occurring to actually occur (or the claim

directly modifies a step, such as claim 5, where step (c) periodically attempts delivery of

the message).

Meanwhile, claim 9 includes terms such as "operable." For example, "a DNS

server operable to route a message to the messaging server...the DNS server

operable to provide the message to the relay server when the messaging server is

inoperable..." However, the term "operable" only requires that the DNS server is

capable of this functionality. As a DNS server is capable of forwarding messages to any

device that is connected to the network, a DNS server is operable to perform the

functionality in this specific instance. The claim does not require that the DNS server do

the forwarding automatically based on the messaging server being inoperable, only that

the DNS server is operable (e.g. capable) to provide a message to a specific entity.

The numerous terms of "operable" that appear in the claims are interpreted in a similar

fashion. If Applicant intends for actions to be taken based on certain conditions (e.g.

the messaging server being inoperable), Applicant should amend the instant claims to

reflect as much.

Conclusion

11.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Scott Christensen whose telephone number is (571)

270-1144. The examiner can normally be reached on Monday through Thursday
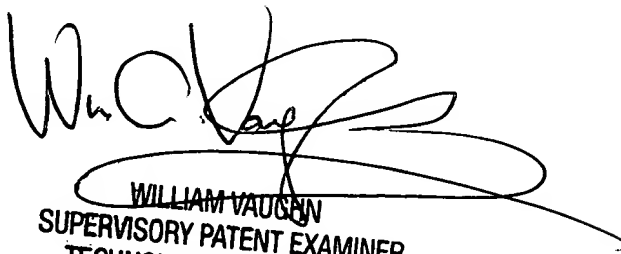
6:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Vaughn William can be reached on (571) 272-3922. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SBC

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